No. 89-1752

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

C. VERNON MASON,

Petitioner,

—v.—

Departmental Disciplinary Committee, Appellate Division of the Supreme Court of the State of New York, First Judicial Department; Office of Chief Counsel,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

I. Whether this Court's decisions in Kugler v. Helfant, 421 U.S. 117 (1975) and Gibson v. Berryhill, 411 U..S. 564 (1973) precluded dismissal of petitioner's Complaint on abstention grounds where he had made a prima facie case of bias and defendants had introduced no contrary evidence.

II. Whether the New York State Attorney General's public dissemination of allegations of professional misconduct against petitioner in the controversial and racially sensitive case of Tawana Brawley deprive him of his rights to due process and undermine his right to a fair and impartial tribunal.

III. Whether Petitioner's Complaint Satisfied the Bad Faith, Harassment, and/or Extraordinary Circumstances Exceptions to Younger Abstention.

PARTIES

Petitioner C. Vernon Mason, Esq., is a prominent Black civil rights and criminal defense attorney licensed to practice law in the courts of the State of New York.

Respondents Disciplinary Committee, Appellate Division of the Supreme Court of the State of New York, First Judicial Department [hereinafter "DDC," "Disciplinary Committee," or "the Committee"] is an arm of the Appellate Division of the Supreme Court for the First Judicial Department [hereinafter "The Appellate Division"], and is charged, pursuant to 22 N.Y.C.R.R. § 603.4 with the duty and empowered to investigate and prosecute matters involving alleged misconduct by attorneys to whom the rules apply, and to impose discipline to the extent authorized by § 603.9 of the Rules.

Respondent Office of Chief Counsel to the Disciplinary Committee consists of the chief counsel, deputy chief counsel and other staff counsel.

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DEPARTMENTAL DISCIPLINARY COMMITTEE,
APPELLATE DIVISION OF THE SUPREME COURT
OF THE STATE OF NEW YORK,
FIRST JUDICIAL DEPARTMENT;
OFFICE OF CHIEF COUNSEL,

Respondents.

On Writ of Certiorari to the United States
Court of Appeals For the Second Circuit

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner C. Vernon Mason respectfully prays that a petition for a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The opinion of the court of appeals for the Second Circuit (set forth at pages A-1 to 9 of the Appendix to this Petition) is reported at 894 F.2d 512 (2d Cir. 1990). The opinion of the United States District Court for the Southern District of New York (Sprizzo, J.) (set forth at pages A-10 to 17) is unreported.

JURISDICTION

The court of appeals issued its judgment and opinion on January 16, 1990 (A-18). A motion, pursuant to Supreme Court Rule 29.2, for an extension of time to file this petition was granted to and including May 10, 1990, by Mr. Justice Marshall on April 9, 1990, Application No. 90-695. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

STATUTORY PROVISIONS

Section 1983 of Title 42 of the United States Code ("Section 1983" or "§ 1983") is set forth at page A-19 of the Appendix. Judiciary Law § 90(10) is set forth at page A-20 of the Appendix. 22 N.Y.C.R.R. §§ 603.4, 603.5 and 603.9, are set forth at pages A-21 to 24 of the Appendix.

STATEMENT OF THE CASE

A. Introduction

This lawsuit involves the fundamental right to have allegations of misconduct against petitioner considered and resolved before a fair and impartial tribunal. Moreover, the issues raised herein strike at the very heart of the integrity of the attorney disciplinary machinery for the State of New York, particularly in situations involving controversial causes. Petitioner maintains that both the district

court and the court of appeals for the Second Circuit improperly and exclusively focused on the nature of the allegations against him while ignoring compelling evidence against the disciplinary machinery of the state of New York of its inability to fairly and impartially adjudicate those allegations, as well as petitioner's federal due process claims.

B. Factual Background

In November 1987, Tawana Brawley, a young Black Wappingers Falls teenager was discovered outside of her old residence in a semi-conscious state. The fifteen year old child, who had been missing for four days, was lying inside a garbage bag in a fetal position with excrement and racial epithets smeared and scrawled over her body. Specifically, the words "KKK" and "NIGGER" were written on Ms. Brawley's

chest, torso and clothing. Ms. Brawley alleged that she had been abducted and sexually assaulted by several white men, one of whom displayed a policeman's badge.

Sometime thereafter, petitioner C. Vernon Mason, Esq., together with fellow attorney Alton H. Maddox, Jr., [1] entered the case as legal advisers to Ms. Brawley. At their prompting, Governor Mario Cuomo agreed to appoint a special prosecutor to investigate Ms. Brawley's allegations of rape and abduction. On January 26, 1988, Governor Cuomo appointed the Attorney General of the State of New York, Robert

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[1]Mr. Maddox is an attorney admitted and practicing in the Second Judicial Department of the state of New York. Complaints of professional misconduct against Mr. Maddox are considered by the Grievance Committee for that Department.

Abrams, to assume that role.[2] Messrs. Mason and Maddox publicly opposed the selection of the Attorney General challenging his competency in criminal law and criticizing his lack of trial experience.

In late February 1988, Attorney General Abrams empaneled a Grand Jury to investigate Ms. Brawley's charges. Over the next seven months, various developments in the investigation of the Brawley incident repeatedly captured the headlines of every major newspaper in New York City and was widely reported by local and national broadcast media. During this period, Messrs. Mason and Maddox constantly challenged the integrity, thoroughness and

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[2]Prior to the appointment of Attorney General Abrams, two previously selected prosecutors -- William Grady and David Sall -- resigned citing unspecified conflicts-of-interest.

fairness of the Attorney General's investigation.[3] In addition, the Brawley family withheld their cooperation from the Attorney General and his staff.

At the conclusion of the controversial investigation, the Grand Jury issued a report in which it found that it had been presented "no evidence that any sexual

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[3]An assortment of incidents gave rise to the concerns of Messrs. Mason and Maddox: (1) subsequent to the withdrawal of the two local prosecutors but prior to the empaneling of the Abrams' grand jury, a former printer in the Attorney General's office was arrested on charges of stealing a transcript of the testimony from the first grand jury; (2) hospital photographs of Ms. Brawley in a partially nude state were broadcast on local and national television; (3) a self-styled "surveillance expert," Samuel McClease, emerged with a fabricated tale of evidence that Ms. Brawley's advisers were perpetrating a "hoax"; (4) Glenda Brawley, Tawana's mother, was subpoenaed to testify before the grand jury although others who Mason and Maddox urged be subpoenaed were not; and (5) confidential grand jury material was leaked to the New York Times prior to the issuance of the Grand Jury's Report.

assault occurred." The Report was released to the public on October 6, 1988 at a mammoth press conference convened by the Attorney General. In addition, the Attorney General announced that he was filing a grievance against Ms. Brawley's attorneys and disseminated over two-hundred copies of his ten-page complaint to the media. The text of that complaint was published the following day in the New York Law Journal.[4]

C. The Committee Investigation and State Court Proceedings

1. Initial Stages of the Committee Investigation.

By letter dated October 14, 1988, petitioner was directed by the Departmental

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[4]The New York Law Journal is a daily business day publication. The Law Journal publishes the court calendars of each judicial division and, consequently, is consulted by judges and lawyers throughout the State.

Disciplinary Committee to respond within twenty days to the Attorney General's allegations of professional misconduct. Enclosed with the letter was a copy of the ten-page complaint of the Attorney General, accompanied by thirty-eight exhibits, and a copy of the 170-page report of the Grand Jury.

Subsequent to service of the October 14 letter, Mr. Mason twice sought and was twice denied a reasonable extension of time in which to respond to the lengthy complaint of the Attorney General. Accordingly, on November 4, 1988, a timely response to the allegations of misconduct was submitted on Mr. Mason's behalf. Mr. Mason subsequently made a request to withdraw that response and to file anew pending his efforts to secure permanent counsel and to obtain and review the

minutes of the Grand Jury of Dutchess County.[5]

This request triggered a flurry of correspondence between the DDC and then-recently retained counsel herein, which culminated in the filing of Mr. Mason's first Article 78 petition with the Appellate Division seeking relief from the arbitrary actions of the Committee.[6] In

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[5]Application for disclosure of the grand jury minutes was made on December 5, 1989 and denied by order dated February 21, 1989. A motion to renew the disclosure motion was subsequently filed as a result of the controversy within the First Department, see supra. The motion to renew was granted, however, the Court adhered to its original decision denying access. Petitioner has noticed his appeal of that decision.

[6]Specifically, appellant sought a reversal of the DDC's decisions (1) denying his request for an extension of time in which to respond to allegations of professional misconduct made by Attorney General Robert Abrams, and (2) refusing to allow Stephanie Y. Moore, Esq., an attorney admitted to practice in the State of Pennsylvania, the United States District

response to Mr. Mason's mandamus petition, the Committee cross-moved, dismissal. In support of the cross-motion, then-Chief Counsel of the DDC, Michael A. Gentile submitted an Affirmation. Attached as an Exhibit to Mr. Gentile's Affirmation was a letter written by Mr. Gentile to the Attorney General during the pendency of the grand jury investigation into Tawana Brawley's disappearance. See A- 43. The letter advised the Attorney General, who was then serving as the special prosecutor to the grand jury investigating Ms. Brawley's charges, that the DDC had commenced an investigation of Mr. Mason in

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Court for the Eastern District of Pennsylvania, and the United States Courts of Appeals for the Third and Fourth Circuits, to proceed on his behalf. Associated with New York Counsel, Ms. Moore had previously represented Mr. Mason before the Committee on an unrelated matter without incident.

connection with his representation of Ms. Brawley. Mr. Gentile expressed interest in certain "information, statements and documents which would be relevant to [the Committee's] inquiry," and specifically solicited receipt of "any evidentiary materials presently available" to the Attorney General and his office.[7] The letter further assured the Attorney General that the Disciplinary Committee would "not take any steps at th[at]] time" but would "await the outcome of the grand jury's inquiry before proceeding further." Finally, the letter requests the Attorney General's "immediate assistance and cooperation" to facilitate the Committee's

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[7]The Second Circuit's characterization of the letter from Mr. Gentile to Attorney General Abrams, to-wit, that it "requested that relevant materials be produced after the Grand Jury completed its work," see A5, is clearly in error. Mr. Gentile sought immediate production of any such materials.

"preparation for possible future action."

Upon discovery of the letter,[8] Mr. Mason filed a second Article 78 petition charging, in effect, prosecutorial misconduct, and seeking an order directing the Committee (1) to dismiss the Attorney General's complaint, against him and/or (2) to grant him discovery to determine, the nature and details of all communications between Mr. Gentile and the Attorney

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[8]In December 1988, prior to his discovery of the Gentile letter to the Attorney General, Mr. Mason had independently lodged a formal complaint of misconduct against Attorney General Abrams. Among other things, Mr. Mason charged that the Attorney General's public dissemination of his complaint was in flagrant disregard of the rules of the DDC and constituted a violation of the Lawyer's Code of Professional Responsibility in that it was, inter alia, intentionally calculated to interfere with the orderly and impartial functioning of the Committee. The Committee dismissed Mr. Mason's complaint against Attorney General Abrams on June 30, 1989, advising Mr. Mason "that the matter remains confidential pursuant to Judiciary Law § 90(10) and 22 N.Y.C.R.R. § 605.24."

General concerning his representation of Ms. Brawley that occurred from the date of Mr. Gentile's letter up to the time that he was served with the Attorney General's complaint.[9] Chief among Mr. Mason's concerns articulated to the court was (1) whether the pending Grand Jury investigation into Ms. Brawley's charges had been deliberately skewed by the Attorney General in order to retaliate against Mr. Mason for his public criticisms of the Attorney General and further to enhance the possibility of securing disciplinary sanctions, and (2) whether confidential grand jury material had been unlawfully disseminated between the two

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[9]Disposition of Mr. Mason's applications before the Appellate Division resulted in the denial of the central relief requested. Request for further relief was effectively denied by the Court of Appeals which refused to grant leave to appeal the orders of the Appellate Division.

offices.

2. Public Allegations of Official Misconduct In the Investigation of the Attorney General's Complaint Against Mr. Mason.

One day after Mr. Mason's discovery of the Mr. Gentile's letter to the Attorney General, a local newspaper reported that Mr. Gentile had resigned his post as Chief Counsel to the DDC effective February 1, 1989. At that time, Mr. Gentile's resignation was attributed solely to issues having nothing to do with Mr. Mason. Subsequently, however, while Mr. Mason's Article 78 petitions were still pending before the Appellate Division, two new published accounts, reported for the first time that there were allegations of official misconduct with respect to the DDC's investigation of Mr. Mason. Specifically, following Mr. Gentile's sudden resignation prominent members of the

New York legal community intimated that Mr. Gentile and his deputy counsel, Sarah Diane McShea, had been forced out by Presiding Justice of the Appellate Division, and demanded an explanation. In response to those demands, Presiding Justice Francis T. Murphy issued a public statement reprinted in the New York Law Journal, in which he acknowledged that he had requested Gentile and McShea's resignations and further maintained that

> reports of the absence and non-productivity of Mr. Gentile caused me concern upon the filing with the DDC in October of 1988 of the complaints of the Attorney General of the State of New York against C. Vernon Mason in the Brawley case, a filing that was made public in an extensive release to the press. Upon that filing, Mr. Gentile repeatedly informed the Clerk of the Court that he, Mr. Gentile, was frightened by the prospect of the Mason matter that he was inclined to find a way of avoiding it. Indeed, Mr. Gentile had the cases [sic] assigned not to himself but

> to a DDC attorney who was told in fact that the attorney would have nothing to do with it.

Mr. Gentile counter-charged that Justice Murphy wanted him to charge Mason "'right off the bat.'"[10] According to Mr. Gentile, "Judge Murphy's interference was aimed at thwarting . . . efforts to assure that Mason received the same due process afforded any lawyer facing charges of serious misconduct." Mr. Gentile also maintained that "'a fair reading' of the Mason case . . . 'will show that Judge Murphy and [his Chief clerk, Harold J.] Reynolds . . . tried to cover up their interference by casting aspersions [on Mr. Gentile and Ms. McShea.]'" Finally, Mr.

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[10]Formal charges are generally preceded by Committee investigations to afford the subject attorney an opportunity to respond to allegations of misconduct and to determine whether such charges are warranted.

Gentile rebuked the Justice for "open[ing] up to the public view a pending matter."

Thereafter, Mr. Gentile and Ms. McShea reportedly filed a disciplinary complaint against Justice Murphy with the State Commission on Judicial Conduct, charging that Justice Murphy and his Chief Clerk Harold J. Reynolds[11], "us[ed] the committee as a tool of personal vengeance and gain and to exercise political power in favor of friends and against political enemies." Further, they repeated their allegations that Justice Murphy improperly interfered in the investigation of disciplinary complaints, including that of the Attorney General against Mr. Mason.

Subsequent newspaper accounts

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[11]On or about March 3, 1989, Mr. Reynolds resigned amid allegations that he personally interfered with two high profile disciplinary investigations that had since been closed.

suggested that the State Commission on Judicial Conduct issued a letter of caution to Justice Murphy. Because the proceedings of the State Commission are confidential, however, the scope of the charges and any investigation thereof are unknown. In addition, because letters of caution are private and not considered as discipline, the contents of such a letter to Justice Murphy, if any, is similarly unknown to petitioner.

Following the airing of allegations between Mr. Gentile and Justice Murphy, Mr. Mason filed an addendum to his then-pending Article 78 petitions again seeking an end to the Committee's investigation of his role in the representation of Ms. Brawley. Mr. Mason charged that the conduct of Mr. Gentile and Justice Murphy had totally undermined his rights to due process and

unalterably compromised his right to a fair and impartial tribunal.

3. The Intervention of New York Court of Appeals.

On February 16, 1989, following the exchange of charges by Gentile and Murphy, the Chief Judge of the Court of Appeals, Sol Wachtler, in a public release in the New York Law Journal instructed the Appellate Division as a "collective body" to "make any necessary inquiry and take such appropriate actions as may be necessary to restore the actuality and perception of order, respect and integrity necessary to the discharge of its important duties, including especially those pertaining to the DDC." The response to Chief Judge Wachtler's directive came in the form of an internal investigation of the Appellate Division by the Appellate Division. Published accounts reported

dissatisfaction with the probe both by the judges of the Appellate Division and members of the DDC. Published accounts further indicated that the testimony of the witnesses appearing before the justices was unsworn. Justice Murphy's own testimony -- which was critical to the underlying issues -- was heard in a session described by an unnamed source as "'not too rigorous.'"

D. The District Court Proceedings

On May 23, 1989, Mr. Mason filed a federal complaint in the Southern District of New York seeking declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202. Mr. Mason alleged violations of his rights secured by the First and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. § 1983, and sought an order preliminarily and

permanently enjoining the DDC from proceeding upon the complaint filed against him by the Attorney General of the State of New York. The complaint alleged that (1) the publication of the disciplinary Complaint against Mr. Mason by the Attorney General and the ensuing improprieties within and between the Appellate Division and the DDC jointly and severally deprived Mr. Mason of his rights to due process and on impartial tribunal, (2) the DDC's solicitation and investigation of the Attorney General's complaint was in bad faith and/or derogation of Mr. Mason's right to due process, and (3) the DDC's solicitation and investigation of the Attorney General's complaint was designed to harass Mr. Mason and in retaliation for his exercise of First Amendment freedoms.

In its order entered on August 21,

1989, the district court denied Mr. Mason's motion for a preliminary injunction and dismissed his complaint citing Younger v. Harris, 401 U.S. 37 (1971). Having conducted no evidentiary hearings, the court held that Mr. Mason "failed to show that he cannot fairly raise his constitutional claims in the State proceedings, and ... failed to show the bad faith or extraordinary circumstances necessary to make Younger abstention inappropriate." See A-34.

E. The Proceedings Before the Second Circuit

Following the district court's decision, Mr. Mason sought a stay enjoining enforcement of its order and the underlying disciplinary proceedings pending appeal. That motion was denied. He filed an emergency motion for a stay pending appeal with the Second Circuit. Following a

hearing on the motion, a panel of the Second Circuit granted Mr. Mason's request for a stay and expedited the briefing and argument on the merits. During argument on the merits, a second panel of the Second Circuit invited and granted an oral application by counsel to the DDC to lift the previously imposed stay. Thereafter, on January 16, 1990, the Second Circuit issued its opinion affirming the decision of the district court, holding that the district court "was entirely correct in its conclusion that Mason's complaint did not require an evidentiary hearing and that the complaint should be dismissed."[12]

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[12]Both the district court and the Court of Appeals suggested that Mr. Mason's remedy to avoid investigation by a biased tribunal was to seek removal to another venue. Following the order of the Court of Appeals lifting the stay of Mr. Mason's compelled participation in the DDC's investigation, Mr. Mason duly sought a change of venue to the Second Department

REASONS FOR GRANTING THE WRIT

The decision of the Second Circuit is premised upon a faulty interpretation of this Court's prior decisions on the disability of tribunals by reason of bias, and further misperceives the standards applicable to the presentment of a prima facie case of unconstitutional bias. Central to the principles underlying the abstention doctrine of Younger v. Harris, 401 U.S. 37 (1971), and its progeny is a security that federal claims can be properly raised and timely decided by a competent state tribunal. See Gibson v. Berryhill, 411 U.S. 564, 577 (1973). Consequently, where no such opportunity to adjudicate federal claims exists, neither

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which was considering identical charges against Mr. Maddox. Mr. Mason's application was opposed by the DDC and denied by the Appellate Division without opinion.

the Younger abstention doctrine nor the policies favoring deferral to state proceedings apply.

The Second Circuit's determination that whether the DDC declines to consider the misconduct of others and, implicitly, the direct effect of that misconduct on the Committee's operations, see A___, is irrelevant to the propriety of the Committee's investigation of Mr. Mason misses the point and effectively denies him a forum in which to present and have adjudicated his federal claims of bias. An adverse resolution of petitioner's claim that the underlying disciplinary investigation is retaliatory or otherwise brought in bad faith does not foreclose his claim that the DDC is unconstitutionally biased to consider such allegations.

The Second Circuit's further

conclusion that Mr. Mason has adequate redress in the state judicial system similarly does not comport with the fundamental right to be tried, in the first instance before an impartial tribunal. See Gibson, 411 U.S. at 577; Wichert v. Walter, 606 F. Supp. 1516, 1522 (D.N.J. 1985) ("nothing requires the court to defer to state proceedings until the plaintiff's case eventually finds its way to an unbiased tribunal within the state system."). Because the Second Circuit's decision improperly insulates the conduct of state officials from immediate review and further requires no rebuttal of compelling evidence of bias within the state's disciplinary machinery, a writ of certiorari should be granted.

I. THE DECISIONS OF THE COURT OF APPEALS IS DIRECTLY AT ODDS WITH THIS COURT'S PRIOR DECISIONS RECOGNIZING THE PROPRIETY OF FEDERAL INTERVENTION

WHERE A STATE TRIBUNAL IS INCOMPETENT TO ADJUDICATE FEDERAL CLAIMS BY VIRTUE OF ITS BIAS.

A. Younger Abstention is Inapplicable to Allegations of Bias.

In Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423 (1982) this Court determined that the principles underlying Younger abstention are not implicated unless the answers to the following questions are in the affirmative:

> [F]irst, do the state bar disciplinary hearing within the constitutionally prescribed jurisdiction of the State Supreme Court constitute an ongoing state judicial proceeding; second, do the proceedings implicate important state interests; and third, is there an adequate opportunity in the state proceedings to raise constitutional challenges.

457 U.S. at 433. Inadequate opportunity to raise constitutional challenges may be established in several ways. First, where there exists procedural obstacles to a fair

opportunity to raise constitutional claims, the opportunity to litigate alleged violations is deemed inadequate. Moore v. Sims, 442 U.S. 415 (1979). Second, where there exists demonstrable practical obstacles to a fair opportunity to raise constitutional claims, the opportunity to litigate alleged violations is similarly deemed inadequate. Younger, 401 U.S. at 45. Finally, where within the decisional tribunal there exists prejudgment on the constitutional claims asserted, or a substantial personal or institutional interest in the outcome, the opportunity to raise those claims is deemed wholly inadequate.[13] Kugler v. Helfant, 421 U.S.

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[13]Petitioner does not dispute, in general, the judicial nature of bar disciplinary proceedings or the important state interests implicated therein. There can be no legitimate state interest, however, in the investigation and/or adjudication of disciplinary charges,

117 (1975); Gibson, 411 U.S. 564 (1973).

In the face of uncontroverted evidence of misconduct adverse to Mr. Mason's rights, the Second Circuit held Mr. Mason's claims of bias "wholly speculative." As this Court recognized in affirming the district court in Gibson, however,

> the inquiry [i]s not whether the Board members were "actually biased but whether, in the natural course of events, there is an indication of possible temptation to an average man sitting as a judge to try the case with bias for or against any issue presented to him."

411 U.S. at 571.[14]

The undisputed facts on this record establish, inter alia, that (1) the Attorney General of the State of New York

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whether brought in good or bad faith, before a biased tribunal.

[14]Nor is the question whether, on a motion for preliminary injunction, Mr. Mason could prove actual bias.

publicly released a ten-page complaint against Mr. Mason charging him with professional misconduct in a highly political, racially sensitive case and called upon the state's Disciplinary Committee to impose disciplinary sanctions; (2) the Presiding Justice of the Appellate Division of New York, in reaction to the Attorney General's publication, sought to pressure the presumably independent Chief Counsel of the disciplinary committee to lodge formal charges immediately against Mr. Mason; (3) the Chief Counsel of the Disciplinary Committee was subsequently ousted by the Presiding Justice, in part, because of the Presiding Justice's disapproval of his handling of the underlying disciplinary investigation of Mr. Mason; (4) the former Chief Counsel filed a formal complaint against the

Presiding Justice with the State Commission on Judicial Conduct alleging, inter alia, that the Presiding Justice improperly interfered with the underlying disciplinary investigation of Mr. Mason; (5) the Court of Appeals for the State of New York ordered the Appellate Division to investigate the charges; (6) the independent investigations by the State Commission on Judicial Conduct and the Appellate Division were conducted in secret without providing Mr. Mason or his counsel an opportunity to confront the evidence or examine the witnesses to determine whether his rights had been violated; and (7) the Court of Appeals accepted and endorsed the conclusion of the Appellate Division's self-examination that no unethical conduct had occurred without reviewing the underlying evidence on which the conclusion

was based.

In Gibson, licensed optometrists charged with unprofessional conduct based upon their employment with a business corporation sought and obtained an injunction against proceedings before the Alabama Board of Optometry on the ground that the administrative process was biased. The district court found adequate evidence of bias both in prejudgment and personal interest and, thus, enjoined the proceedings. This Court affirmed the injunction based upon personal interest but declined to reach the prejudgment issue. Specifically, this Court held that the Board of Optometrists was disabled due to a potential pecuniary interest in the outcome of its proceedings for each member of the Board. Here, the Second Circuit adversely decided Mr. Mason's claims of prejudgment,

but failed to address the question of personal and/or institutional interest.

As in Gibson, however, there is "sufficient substance" to the claim that the disciplinary machinery of the First Judicial Department for the State of New York is incompetent by reason of bias to adjudicate Mr. Mason's claims. The controversy that erupted following the discharge of Mr. Gentile, which was prompted by the public filing of the complaint of the Attorney General against Mr. Mason, resulted in serious charges of misconduct specifically with respect to the investigation of Mr. Mason. Published accounts quoted Committee members, Justices, and other court personnel taking sides in the dispute. Moreover, the New York Times reported that "some of the committee's 36 members now believe that the

case against Mr. Mason has been tainted by Justice Murphy's interference." NYT, A Top Justice Fights Charges Of Misconduct, April 21, 1989, p. B1, B2. Further, the controversy proved "embarrassing to ... judges all over the State." NYT, Wachtler to Act on Lawyer's Panel Fight, Feb. 4, 1989, B1.

The facts surrounding the aftermath of the forced resignation of Mr. Gentile are both legion and suspicious. Those facts and circumstances, fairly construed, clearly give rise to an impermissible risk of bias, warranting federal intervention to determine Mr. Mason's claims. Both the Disciplinary Committee and the Appellate Division are infested with an impermissible conflict-of-interest, whether characterized as direct or indirect. Namely, their interest is in restoring integrity and

respect to their proceedings. As in Gibson, the disciplinary machinery of New York State bears to benefit from one determination on Mr. Mason's claims and to suffer from another. A conclusion that Mr. Mason's federal allegations of official misconduct by and within the Appellate Division and its Disciplinary Committee are false is in the interest of each member of those bodies. "[I]n the natural course of events, there is an indication of possible temptation" to those who are to consider the allegations against Mr. Mason "to try the case with bias for or against any issue presented." Gibson, 411 U.S. at 571.

The Appellate Division's interest in disproving Mr. Mason's claims is exacerbated by its internal investigation exonerating, not only the accused Justice Murphy, but also all members of the Court

of any wrongdoing. This latter conflict-of-interest is shared by the Court of Appeals of the State of New York, which upon receipt of the report of the Appellate Division expressed satisfaction and commended the Justice's efforts without reviewing the fruits thereof.

In sum, at each level of the disciplinary machinery of the first department, a determination has been made (based upon evidence to which Mr. Mason has no access in the normal course of the underlying proceedings) on issues identical to or inextricably intertwined with Mr. Mason's federal claims. The involvement by the DDC, its Committee, the Appellate Division and the Court of Appeals in the purported resolution of the Gentile/Murphy controversy, in which Mr. Mason's investigation figured prominently, gives

rise to an impermissible risk of bias, and, further, constitutes unambiguous authority that Mr. Mason cannot adequately, fairly, and/or consistent with the principles espoused in Middlesex, pursue his due process claims with respect to the effect of that controversy before these bodies. The Second Circuit's failure to pass upon the conflict-of-interest claims triggered by the Gentile/Murphy controversy and all of its offspring, effectively denies Mr. Mason the relief to which he is entitled under the decisions of this Court.[15]

B. Petitioner's Prima Facie Showing of Bias Entitled Him to an Evidentiary Hearing and Required Respondents to Come Forward With Evidence That the Proceedings Were Not Tainted By Bias.

Under Younger, a plaintiff seeking

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[15]MR. Mason does not abandon his claim of bias by virtue of prejudgment. For purposes of this petition he has limited his discussion to the claim which was ignored by the Second Circuit.

federal intervention must meet a heavy burden justifying departure from the fundamental policy against federal interference in legitimate state proceedings. Where a plaintiff's allegations

> depict a situation in which defense of the State's . . . prosecution will not assure adequate vindication of constitutional rights[, and] . . . suggest that a substantial loss of or impairment of freedoms of expression will occur if [plaintiff] must await the state court's disposition and ultimate review in this Court of any adverse determination[, t]hese allegations, if true, clearly show irreparable injury.

Dombrowski v. Pfister, 380 U.S. 479, 485-86 (1965), quoted in Younger, 401 U.S. at 48-49. Allegations of bias, supported by demonstrably objective evidence, are sufficient proof of the irreparable harm necessary to obtain preliminary injunctive

relief.[16] Accordingly, the burden imposed upon a plaintiff seeking to invoke the traditionally recognized jurisdiction of the federal courts is less than that imposed upon a plaintiff seeking an exception to the policy of federal deference to state court proceedings underlying the Younger abstention doctrine.

Here, petitioner plead sufficient facts and presented objective evidence of, at a minimum, an impermissible risk of bias within and Appellate Division and the

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[16]Courts have consistently recognized that submission of ones claims to a biased tribunal is inherently harmful and satisfies the irreparable harm requirement for injunctive relief. See Gibson, 411 U.S. at 577; Ward v. Village of Monroeville, 409 U.S. 57, 62 (1972); United Church of the Medical Center v. Medical Center Comm'n, 689 F.2d 693, 699 (7th Cir. 1982); Wichert v. Walter, 606 F.Supp. 1516, 1522 (D.N.J. 1985); see also In Re Murchinson, 349 U.S. 133, 136 (1955) (recognizing a prohibition against trial before judges who may have no "actual bias" to satisfy the appearance of justice'").

Disciplinary Committee. Under the traditional rules governing injunctive relief, that showing was sufficient to warrant the issuance of a preliminary injunction to further consider Mr. Mason's claims. "[U]nder these circumstances the District Court issuing the injunction would have continuing power to lift it at any time and remit the plaintiff[] to the state courts if circumstances warranted." Younger, 401 U.S. at 49.

In the face of Mr. Mason's overwhelming objective evidence of misconduct and bias and in the absence of any contrary evidence from the Disciplinary Committee, the failure and/or refusal of the Second Circuit to shift the burden onto the Committee to rebut the uncontroverted inference of prejudice effectively denied Mr. Mason a hearing on his constitutional

claim. Because the Second Circuit imposed an improper burden on petitioner at the threshold to present credible evidence of impermissible bias and/or failed to credit his undisputed prima facie showing, this Court should grant a writ of certiorari.

II. THE PUBLIC DISSEMINATION BY THE NEW YORK STATE ATTORNEY GENERAL OF CHARGES OF PROFESSIONAL MISCONDUCT AGAINST PETITIONER IN A HIGHLY CONTROVERSIAL AND RACIALLY SENSITIVE CASE WAS UNETHICAL AND DEPRIVED PETITIONER OF HIS RIGHTS TO DUE PROCESS AND A FAIR AND IMPARTIAL TRIBUNAL

The claim that both the district court and the Second Circuit assiduously avoided lies at the heart of Mr. Mason's complaint. Specifically, the effect of the Attorney General's public dissemination of his complaint on the bodies which were to determine the validity of those allegations has never been squarely addressed. Notwithstanding the independent impropriety of the dissemination of the Attorney General's complaint,[17] the events that

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[17]DR8-101(2) prohibits a lawyer who holds a public office from "[u]s[ing] his public position to influence, or attempt to influence, a tribunal to act in favor of himself ...." There can be little doubt that the Attorney General's actions were intended to and/or had the effect of directly influencing the actions of at

unfolded thereafter, as repeatedly and widely reported in the media, confirmed the undue influence of the state's top prosecutor on the disciplinary machinery of the First Department, if not the entire state.

The Second Circuit's implication that the Disciplinary Committee need not consider Mr. Mason's due process challenges to the Attorney General's conduct necessarily authorizes state court avoidance of Mr. Mason's claims of bias, and relegates him, in the first instance, to a tribunal, which by all objective indicia, is biased against him. The court's failure to probe the relationship between the Attorney General and the Office

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least both Justice Murphy and MR. Gentile, the respective heads of the judicial and administrative arms of the disciplinary machinery for the First Department.

of Chief Counsel during the pendency of the grand jury investigation constitutes a total abrogation of the responsibility of federal courts to insure that a legitimate state interest is at stake. There can be no cognizable, legitimate state interest in subjecting attorneys to bar disciplinary investigations and/or proceedings before biased tribunals.

Both the Second Circuit and district court also ignored the implications of the DDC's resolution of Mr. Mason's complaint challenging the conduct of the Attorney General. While rejecting as baseless Mr. Mason's claims that the Attorney General's publication of his allegations of misconduct against him operated to undermine his rights to due process and an impartial tribunal, the DDC simultaneously advised Mr. Mason the matter concerning his

complaint against the Attorney General remains confidential. The obvious application by the DDC of a double standard to the question of the propriety of disseminating complaints of misconduct against attorneys is itself evidence of Committee bias against Mr. Mason, and further infringes upon his right adequately to defend himself against public allegations of misconduct.

Indeed, in Butterworth v. Smith, 58 U.S.L.W. 4363, 4365 (U.S. March 21, 1990), (No. 88-1993, this Court recently recognized, in a different yet similar context, that the interest in keeping information regarding a "targeted individual" dissipates once the individual has presumably been exonerated. Although petitioner recognizes, in general, the state's interest in preserving the

confidentiality of complaints deemed to be baseless, it shocks the conscience that the DDC could elevate the "reputational interests" of the Attorney General over the due process and First Amendment rights of Mr. Mason.[18]

The Second Circuit ignored material facts warranting further inquiry into the circumstances surrounding the investigation by the DDC of the Attorney General's complaint. The DDC has repeatedly indicated its refusal to consider charges concerning the conduct of the Attorney General as part of its inquiry into the

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[18]The incident complained of in Mr. Mason's complaint against the Attorney General was a public act of a public official. The DDC's confidentiality requirement therefore, impairs not only Mr. Mason's right to defend himself but it also encumbers his right, at the cornerstone of First Amendment freedoms, to criticize government officials.

allegations against Mr. Mason.[19] The Second Circuit has erroneously endorsed that view. If Mr. Mason's allegations are true, as they must be assumed to be, federal dismissal under Younger permits the very state proceedings the Constitution forbids. Accordingly, this Court should issue a writ of certiorari.

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[19]Moreover, notwithstanding the clear conferral by 22 N.Y.C.R.R. § 603.5 upon "an attorney under. . . investigation" of the right to subpoena witnesses, the DDC has orally maintained that said right does not attach unless and until formal charges are filed, and has further indicated that it will oppose the issuance of any such subpoenas.

III. YOUNGER ABSTENTION IS UNWARRANTED ON THIS RECORD

Mr. Mason's claims meet the bad faith, harassment, and/or extraordinary circumstances exception to Younger abstention. Under extant law, "[a] showing of bad faith or harassment is equivalent to a showing of irreparable injury under Younger, and irreparable injury independent of the bad faith prosecution need not be established." Fitzgerald v. Peek, 636 F.2d 943, 944 (5th Cir. 1981) (per curiam) (citing Shaw v. Garrison, 467 F.2d 113, 120, (5th Cir.), cert. denied, 409 U.S. 1024 (1972).

Although this Court has noted that bad faith "generally means that a prosecution has been brought without a reasonable expectation of obtaining a valid conviction," Kugler, 421 U.S. at 126 n.6, courts have recognized that "[b]ad faith

can take many forms," Wilson v. Thompson, 593 F.2d 1375, 1382 n.7 (5th Cir. 1979), and may be, in some instances, demonstrated absent a showing that a prosecution could not possibly result in a valid conviction. For example, where the initiation of the action was itself pursuant to impermissible reasons, court have recognized an exception to Younger. Wilson, 593 F.2d at 1383. Accord Rowe v. Griffin, 676 F.2d 524 (11th Cir. 1982); Martin v. Attaway, 506 F.Supp. 603 (S.D.Ga. 1981). Similarly, bad faith exist where the expectation of obtaining a facially "valid conviction" is based upon committing the charges to a patently biased tribunal.

Younger also recognizes that "[t]here may . . . be extraordinary circumstances in which the necessary irreparable injury can be shown even in the absence of bad faith

and harassment." 401 U.S. at 53. Like the "bad faith" exception, the "extraordinary circumstances" exception is a flexible one which evades precise definition.[20] The official misconduct alleged by Mr. Mason's complaint cannot be shielded from federal review on the basis that it is so extraordinary that it was not expressly anticipated by this Court.

The decision of the Second Circuit that Mr. Mason may raise whatever legitimate defenses he has throughout the state judicial process begs the question whether the underlying investigation is being conducted in bad faith. The right recognized by this Court and the lower courts "is to be free of bad faith charges

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[20] See Younger, 401 U.S. at 54 (recognizing and declining to specify broad range of unusual situations warranting federal intervention).

and proceedings, not to endure them until their speciousness is eventually recognized." Bishop v. State Bar of Texas, 736 F.2d 292, 294 (1984) (citing Shaw v. Garrison, 467 F.2d 113, 122 n.11 (5th Cir.), cert. denied, 409 U.S. 1024 (1972).[21]

The Second Circuit failure to recognize the breadth of the "bad faith" exception to Younger abstention was

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[21]Although the Second Circuit does not specifically reject Mr. Mason's claim that the allegations of the Attorney General are brought in bad faith and for the purpose of harassment, it suggests that the propriety of the Committee's inquiry into the allegations may be properly pursued through the state court process. See A-15 to 16. Parenthetically, the bulk of the charges by the Attorney General against Mr. Mason involve plain expressions of opinion, protected by the First Amendment, or pure speculation, the response to which implicates the attorney-client privilege. Mr. Mason maintains that the assertion of those allegations are in bad faith and the requirement by the Committee that Mr. Mason defend against such allegations constitutes harassment.

compounded by its application of an erroneous legal standard to determine whether Mr. Mason's burden of demonstrating the same had been met. In Smith v. Hightower, 693 F.2d 359 (5th Cir. 1982) the Fifth Circuit Court of Appeals reaffirmed its standard for applying the "bad faith" exception to Younger in a given case. Drawing from its prior decision in Wilson v. Thompson, 593 F.2d 1375 (5th Cir. 1979), the Hightower Court employed a burden shifting mechanism "to determine if the constitutional violation is causally related to the prosecution that the plaintiff seeks to enjoin" Hightower, 693 F.2d at 367. Under this mechanism, the plaintiff must first demonstrate "that the conduct allegedly retaliated against or sought to be deterred was constitutionally protected." Id. at 366 (citations

omitted). Second, the plaintiff must show that the state's bringing of the challenged proceeding "was motivated at least in part by a purpose to retaliate for or to delete that conduct." Id. Thereafter, the burden shifts to the state to demonstrate "by a preponderance of the evidence that it would have reached the same decision . . . whether to prosecute even had the impermissible purpose not been considered." Id.

There can be no question that the underlying investigation of Tawana Brawley's allegations was controversial. Mr. Mason concedes that he criticized the Attorney General's performance throughout the investigation and submitted published accounts memorializing such criticisms. Indeed, Mr. Mason specifically alleged that Mr. Abrams' conduct was singularly intended

to repudiate challenges made throughout the course of the investigation to his prosecutorial competency[22] -- challenges that, no matter how offensively perceived, are at the heart of First Amendment freedoms. See Bridges v. California, 314 U.S. 252, 270 (1941) ("[I]t is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions.").

Further, Mr. Mason produced evidence indicating that the Office of the Chief Counsel and the DDC were merely acting as

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22 A finding of "bad faith" is warranted where a prosecutor pursues highly questionable charges apparently for the sole purpose of gaining publicity for himself. Shaw v. Garrison, 467 F.2d 113 (5th Cir.), cert. denied, 409 U.S. 1024 (1972). Moreover, "the strength of the evidence and the seriousness of the charges should be considered in determining if retaliation or bad faith exists." Hightower, 693 F.2d 359 (1982). See infra note 21.

the catspaw of the Attorney General, or otherwise shared a common, illicit purpose. Specifically, the letter of Mr. Gentile during the pendency of the underlying grand jury investigation to the Attorney General may be reasonable construed as a solicitation of a complaint from the Attorney General. Moreover, and more important, the DDC's disposition of Mr. Mason's claim of misconduct against the Attorney General further indicates a concerted effort to retaliate again him. Finally, the absence of any evidence that the Committee had indeed initiated and was actively conducting a "sua sponte" investigation prior to the receipt of the Attorney General's complaint indicates improper motive.[23]

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[23]Again, the content of the complaint and circumstances of its dissemination further support Mr. Mason's claim of

Mr. Mason's proof was adequate to obtain a preliminary injunction. In this regard, Lewellen v. Raff, 851 F.2d 1108 (8th Cir. 1988), makes clear that the quantum or proof required to be produced by plaintiff varies depending upon the stage of the proceeding and the nature of the relief requested. Specifically, the showing required to obtain a preliminary injunction on a claim of bias is clearly less than the substantially heavier showing necessary to secure a permanent injunction. Lewellen, 851 F.2d 1108, 1110 (8th Cir. 1988).

Mr. Mason's complaint alleged facts sufficient to bring his claims within one of the recognized exceptions to Younger

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retaliatory purpose. During the press conference in which the complaint was released, the Attorney General publicly vilified both Messrs. Mason and Maddox, and chastised the Brawley family.

abstention, and his motion for preliminary injunction should have been granted. This Court should issue a writ of certiorari to insure that the standards governing federal interference with state proceedings are not manipulated to deprive advocates of controversial causes their constitutional guarantees of due process and free speech. Mr. Mason's challenges are precisely contemplated by the long-honored exceptions to Younger abstention.

CONCLUSION

For all of the above reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: May 10, 1990

APPENDICES

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 545 -- August Term 1989

Argued: Oct. 4, 1989
Decided: January 16, 1990

Docket No. 89-7918

C. VERNON MASON,

Plaintiff-Appellant,

v.

DEPARTMENTAL DISCIPLINARY COMMITTEE, APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST JUDICIAL DEPARTMENT: OFFICE OF CHIEF COUNSEL,

Defendants-Appellees.

Before: NEWMAN, PRATT, and MAHONEY, Circuit Judges.

Appeal from a judgment of the District Court for the Southern District of New York (John E. Sprizzo, Judge) dismissing on abstention grounds a complaint that sought an injunction against an investigation by a

state court disciplinary committee.

Affirmed.

Stephanie Y. Moore
New York, N.Y.
(William M. Kunstler
Ronald L. Kuby
New York, N.Y. on
the brief), for
plaintiff-appellant.

James G. Greilsheimer
New York, N.Y.
(Alan M. Klinger
Joseph J. Giamboi
Stroock & Stroock & Lavan
New York, N.Y. on
the brief), for
defendants-appellees.

JON O. NEWMAN, Circuit Judge:

C. Vernon Mason, a lawyer, appeals from the August 24, 1989, judgment of the District Court for the Southern District of New York (John E. Sprizzo, Judge) dismissing his complaint, which sought to enjoin an investigation of him by a state court disciplinary committee looking into possible violations of the Code of Professional Responsibility. The District Court concluded that the complaint failed to allege circumstances sufficient to warrant an exception to the abstention doctrine as enunciated in Younger v. Harris, 401 U.S. 37 (1971), and, more particularly in the context of lawyer disciplinary matters, in Middlesex County Ethics Committee v. Garden State Bar Ass'n, 457 U.S. 423 (1982). We affirm.

Background

In June 1988, the Departmental Disciplinary Committee of the New York Supreme Court, First Judicial Department ("the Committee"), which is the appellee here, began an investigation of Mason on its own initiative, acting pursuant to N.Y Rules of Court § 605.6(a) (McKinney 1989). The Committee acted in response to numerous inquiries and allegations it had received concerning Mason's conduct in connection with his representation of Tawana Brawley. Brawley had become the center of a controversy arising out of her claim that a group of men had abducted and raped her. In the course of controversy, the Governor of New York appointed the Attorney General, Robert Abrams, as a special prosecutor to investigate Brawley's claim. Abrams

convened a special grand jury, which sought unsuccessfully to obtain testimony from Brawley and her mother. Ultimately the Grand Jury issued a report concluding that Brawley's claim was without basis in fact.

During the course of the Grand Jury's inquiry, the Committee had notified Abrams that it had begun an investigation of Mason and had requested that relevant materials be produced after the Grand Jury completed its work. When that occurred, Abrams announced that he would request the appropriate disciplinary committees to consider disciplinary proceedings against Brawley's advisers, including Mason. In an October 6, 1988, letter to the Committee, Abrams detailed the respects in which he believed Mason had violated the Code of Professional Responsibility. In an October 14, 1988, letter to Mason, the Committee

informed him of its investigation, enclosed a copy of Abrams' October 6 letter, and asked him to respond by November 4 to the allegations of professional misconduct in Abrams' letter.

Lawyers purporting to represent Mason twice asked the Committee for an extension of time to reply; both requests were denied. One of these lawyers submitted a response to the Committee on November 4. Thereafter new counsel for Mason wrote the Committee to ask for a return of the November 4 response; this request was denied. In subsequent correspondence, the Committee informed Mason that one of his lawyers, Stephanie Y. Moore, Esq., could not represent him as she was not admitted to practice in New York.

Mason then began a series of actions in state court. On December 5, 1988, he

moved in the Supreme Court for disclosure of the Grand Jury minutes; this motion was denied. On December 8, the Committee again told Mason that he could not withdraw his response, but gave him until January 9, 1989, to file a supplemental response. On December 20, 1988, Mason began an Article 78 proceeding in the Appellate Division, seeking an order requiring the Committee to grant him a further extension and to recognize Moore as his lawyer. On January 5, 1989, Mason began a second Article 78 proceeding, seeking an order directing the Committee to cease its investigation and to disclose communications concerning the investigation between Abrams and the Committee's then chief counsel, Michael A. Gentile. On February 22, the Appellate Division ruled in both proceedings. The Court granted Mason 60 additional days to

respond to the Committee, allowed Moore to appear for Mason upon filing a proper application for pro hac vice admission, and dismissed the second Article 78 proceeding. Leave to appeal to the Court of Appeals was denied.

Prior to the extended date for filing his response with the Committee, Mason filed the instant lawsuit in the District Court. The parties stipulated to defer Mason's response until disposition by the District Court. The federal court complaint asserted, among other things, that the action of the Attorney General in disclosing his allegations of unethical conduct by Mason and the Committee's "solicitation" and "adoption" of the Attorney General's "complaint" deprived Mason of his rights to due process of law and impaired his First Amendment right to

freedom of speech.

Since Mason's claim for federal court intervention relies on developments concerning the resignation of the Committee's chief counsel, those developments must be elaborated. On January 13, 1989, Gentile resigned at the request of the Honorable Francis T. Murphy, Presiding Justice of the Appellate Division, First Department. On that date Justice Murphy released a report explaining why he had requested the resignation. The report mentioned deficiencies in Gentile's administration of various matters in his office, including the Mason investigation. On February 16, the Honorable Sol Wachtler, Chief Judge of the New York Court of Appeals, directed the First Department to make an inquiry concerning the Gentile resignation and "promptly do whatever is

necessary to maintain the dignity, respect and integrity" of the Court and the Committee. N.Y. Law Journal, Feb. 16, 1989, at 1, col. 3. Justice Murphy appointed four justices of the Appellate Division, First Department, to conduct the inquiry. All twelve of the associate justices of the First Department participated in the questioning of witnesses during the inquiry. On April 18, the Appellate Division released a report, concurred in by all but one of its members. Among other things, the report concluded that no member of the Court had participated in the investigation of any disciplinary matter. Chief Judge Wachtler, on behalf of the Court of Appeals, issued a letter to the Appellate Division, expressing satisfaction that the objectives of the inquiry process had been met.

The District Court denied Mason's motion for a preliminary injunction and dismissed the complaint on abstention grounds. The Court heard oral argument but denied a request for an evidentiary hearing. A panel of this Court granted an expedited appeal and stayed the Committee's efforts to obtain further information from Mason. After receiving the parties' briefs and hearing oral argument, this panel vacated the stay.

Discussion

Appellant acknowledges the pertinence of Younger abstention to attorney disciplinary proceedings, see Middlesex County Ethics Committee v. Garden State Bar Ass'n, 457 U.S. at 432-35, but contends that his complaint sufficiently alleges "bad faith, harassment, or some other extraordinary circumstance that would make

abstention inappropriate," id.. at 435. He contends that he lacks an effective opportunity to assert his constitutional claims because the Committee is biased and is "jurisdictionally incompetent" to adjudicate his allegations of official misconduct. He also contends that he has no opportunity for effective judicial review within the state court system.

Mason's allegations of bias do not set forth circumstances that warrant federal court intervention. See Kugler v. Helfant, 421 U.S. 117 (1975). Contrary to his assertions, the Committee is not disabled from proceeding because it sought evidence of his possibly unethical conduct from the Attorney General nor because the Attorney General aired his allegations against Mason. Moreover, Mason mischaracterizes the situation in contending, as evidence of

bias, that the Committee has "adopted" the Attorney General's "complaint." Thus far, the Committee has not filed any charges against Mason. See N.Y. Rules of Court § 605.12. It is conducting an inquiry to determine whether to file charges. In doing so, the Committee is entitled to seek evidence that the Attorney General may have. The Committee does not disable itself from proceeding by requesting a response from Mason as to the matters raised by the Attorney General nor by alerting Mason to the general scope of the requested response through the device of sending him the allegations made by the Attorney General.

Nor is bias shown by the allegations concerning the resignation of Gentile, the role of Justice Murphy in such resignation, or any state inquiry into such matters. It

is wholly speculative for Mason to conclude that the members of the Committee or its current staff have prejudged him, or are incapable of impartially deciding whether to initiate formal proceedings and, in that event, of conducting them fairly. Finally, no sufficient claim of bias is shown by the fact that the Committee has rejected Mason's claim of bias, nor by the state courts' refusal to halt the Committee's efforts to ascertain whether grounds exist for formal charges. Obviously state forums do not disable themselves from investigating and adjudicating matters simply by disagreeing with accusations made against them.

Mason's further point that the Committee is unable to adjudicate many of his allegations is partly irrelevant and partly mistaken. To the extent that he

faults the Committee because it will not adjudicate his allegations of misconduct by other persons, his point is irrelevant to the propriety of the Committee's inquiry into the allegations against Mason. The Committee is not disabled from proceeding because it declines to make the Mason inquiry an occasion for assessing the lawfulness of others. To the extent that Mason has legitimate defenses to any charges that may be brought against him, he will have an opportunity to assert his defenses in appropriate New York forums. See Turco v. Monroe County Bar Ass'n, 554 F.2d 515, 519 (2d Cir.), cert. denied, 434 U.S. 834 (19177); Anonymous v. Association of the Bar, 515 F.2d 427, 432 (2d Cir.), cert. denied, 423 U.S. 863 (1975); Erdmann v. Stevens, 458 F.2d 1205, 1211-12 (2d Cir.), cert. denied, 409 U.S. 889 (1972);

Matter of Capoccia, 59 N.Y.2d 549, 553, 466 N.Y.S.2d 268, 269 (1983); Matter of Anonymous Attorneys, 41 N.Y.2d 506, 509, 393 N.Y.S.2d 961, 964 (1977).

Mason's assertion of the futility of judicial review through the state court system has two components. His first point echoes his claim of bias by asserting that state court review is futile because he has thus far not prevailed in his effort to halt the Committee's inquiry. In fact, his recourse to the state courts has demonstrated that those courts are fully prepared to rule favorable on his meritorious assertions. Their refusal to halt the inquiry at its incipient stage provides no basis for believing that they will be reluctant to entertain any legitimate objections Mason may have inn the event that disciplinary sanctions are

improperly imposed.

Mason's second point is that state law does not permit judicial review of one possible step the Committee might take -- the issuance of a letter of caution. See N.Y. Rules of Court §§ 605.6(e)(3), 605.7, 605.8. He relies on Parker v. Commonwealth of Kentucky Board of Dentistry, 818 F.2d 504 (6th Cir. 1987), for the proposition that Younger abstention is not warranted where the opportunity for judicial review "is contingent upon the type of disciplinary action taken." Id. at 509. Parker concerned an absence of judicial review of all the available disciplinary sanctions except the sanction of license revocation. By contrast, under New York's procedures, all actions characterized as disciplinary are subject to judicial review. A letter of caution "does no

constitute discipline by the Committee." N.Y. Rules of Court § 605.8(b)(2)(ii). Of course, a state may not employ labeling to insulate from judicial scrutiny adverse action that impairs constitutionally protected rights. If it should develop that a letter of caution is issued under circumstances where such action impairs Mason's federal rights, we are not foreclosing federal court scrutiny. But the possibility of such an eventuality is too speculative to warrant a relaxation of Younger abstention requirements.

In sum, Mason has alleged no circumstances that show that the Committee or the state courts are proceeding against him in bad faith or harassing him, nor has he alleged any other valid grounds for an exception to Younger abstention. The District Court was entirely correct in its

conclusion that Mason's complaint did not require an evidentiary hearing and that the complaint should be dismissed.

The judgment of the District Court is affirmed.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 16th day of January, one thousand nine hundred and ninety.

PRESENT: Hon. Jon O. Newman,
Hon. George C. Pratt,
Hon. J. Daniel Mahoney

CIRCUIT JUDGES

C. VERNON MASON,

Plaintiff-Appellant Docket

v.

DEPARTMENTAL DISCIPLINARY COMMITTEE, APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST JUDICIAL DEPARTMENT: OFFICE OF CHIEF COUNSEL,

Defendants-Appellees

Appeal from the
United States District Court
for the Southern District of New York

This cause came on to be heard on the transcript of record from the United States

District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed in accordance with the opinion of this court with costs to be taxed against the appellant.

Elaine B. Goldsmith,
Clerk

By: Edward J. Guardaro
Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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C. VERNON MASON,

Plaintiff,

-against-

DEPARTMENTAL DISCIPLINARY COMMITTEE, APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST JUDICIAL DEPARTMENT, Office of the Chief Counsel,

Defendant.
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89 Civ. 3598 (JES)

MEMORANDUM OPINION AND ORDER

SPRIZZO, D.J.:

Plaintiff C. Vernon Mason brings this action pursuant to 42 U.S.C. § 1983 alleging violations of his rights under the First and Fourteenth Amendments to the United States Constitution. Plaintiff seeks to preliminarily and permanently enjoin defendant Departmental Disciplinary Committee ("DDC") from proceeding with an

investigation into plaintiff's allegedly improper conduct as an attorney. Defendant has cross-moved to dismiss the complaint pursuant to Younger v. Harris, 401 U.S. 37 (1971). For the reasons that follow, defendant's motion is granted and plaintiff's motion is denied.

FACTS

The following facts are undisputed.

Plaintiff C. Vernon Mason is an attorney admitted to practice and practicing law in the First Judicial Department of New York State. Defendant DDC is the entity charged with the responsibility of investigating allegations of attorney misconduct in the First Judicial Department. See N.Y. Comp. Code Rules & Reg. tit. 22 § 603.4.

After receiving a letter from five New

York Assemblymen in June of 1988, see Complaint, Exhibit A at 236; Affidavit of Hal R. Lieberman ("Lieberman Aff.") at ¶ 5, the DDC, through its then Chief Counsel Michael Gentile, wrote a letter to the Attorney General of the State of New York, Robert Abrams, requesting his assistance in the investigation of possibly improper conduct by plaintiff in connection with his representation of Tawana Brawley. See id. at ¶6; N.Y. Comp. Code Rules & REg. tit. 22 § 603.4(c). In addition, the DDC indicated it would stay its investigation pending completion of a grand jury investigation into the Brawley case. See Lieberman Aff. at ¶ 8.

On October 6, 1988, the Attorney General publicly released the grand jury's report and a complaint detailing allegations of plaintiff's potentially

unethical conduct. See id. at ¶ 9. Thereafter, on October 14, 1988, the DDC mailed a copy of the Attorney General's complaint to plaintiff and requested a response to the allegations contained therein within twenty days. See id.

After plaintiff's requests for an extension of time to respond to the complaint were denied, plaintiff answered the charges on November 4, 1988, and was advised by the DDC that he could supplement his answer by January 9, 1989. See id. at ¶ 12 n.1. In addition, the DDC notified plaintiff that Stephanie Moore would not be permitted to represent him in the disciplinary proceeding because she is not admitted to practice in New York.[1]

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[1]Defendant's actions later became the subject of two ARticle 78 petitions. One petition challenged the denial of plaintiff's requests for an extension and the DDC's decision not to allow Ms. Moore

In January and February of 1989, a controversy regarding the handling of DDC investigations arose involving the DDC's then Chief Counsel Michael Gentile and the Chief Judge of the Appellate Division, First Department, Justice Francis Murphy. See Complaint at ¶ 26. Plaintiff contends that this controversy is related in some fashion to his pending disciplinary investigation. See id. at ¶¶ 29-30. Mr. Gentile later resigned from his position with the DDC and, after conducting an

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to represent him. See Complaint at ¶ 19. The second petition sought to have the complaint dismissed on grounds similar to those alleged in the instant action. See id. at 23. By order dated February 22, 1989, the Appellate Division, First Department, granted plaintiff a sixty day extension of time to respond, affirmed on the issue of Ms. Moore's representation and denied the motion to dismiss the disciplinary complaint without opinion. See id. at ¶¶ 39-41. Leave to appeal was denied by the New York Court of Appeals on May 5, 1989. See id. at ¶ 49.

investigation, the Justices of the First Department found that Justice Murphy had not engaged in any ~~improper~~ conduct. See id. at ¶ 47.

DISCUSSION

Plaintiff now contends that the institution of disciplinary proceedings against him violates his First Amendment rights, and that the manner in which the disciplinary investigation was initiated and is being conducted violates his due process rights under the Fourteenth Amendment. Defendant argues that this Court should abstain from taking jurisdiction over this action and dismiss plaintiff's complaint under Younger v. Harris, 401 U.S. 37 (1971).

Younger v. Harris, requires that, consistent with principles of federalism

and comity, federal courts refrain from interfering with ongoing state criminal proceedings. The Younger doctrine has since been extended to encompass other non-criminal proceedings, see e.g., Huffman v. Pursue, Ltd., 420 U.S. 592 (1975), and in particular has been held applicable to attorney disciplinary proceedings, see Middlesex County Ethics Comm. v. Garden State Bar Assoc., 457 U.S. 423 (1982); Anonymous v. Assoc. of the Bar of the City of New York, 515 F.2d 427 (2d Cir. 1975); Erdman v. Stevens, 458 F.2d 1205 (2d Cir. 1972), so long as those proceedings afford an adequate opportunity to raise constitutional challenges. See Middlesex, supra, 457 U.S. at 432.

Plaintiff does not claim and cannot claim that under New York law he cannot obtain effective judicial review of his

constitutional challenges to the disciplinary proceedings.[2] See Erdman, supra, 458 F.2d at 1211. Plaintiff does contend, however, that defendant's bad faith and other extraordinary circumstances make abstention inappropriate. However, while it is true that a showing of bad faith or extraordinary circumstances could justify federal judicial relief not withstanding the pendency of state judicial proceedings, see Middlesex, supra, 457 U.S. at 435, plaintiff has failed to demonstrate that such extraordinary circumstances or

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[2]Plaintiff does argue that if he receives a letter of caution from the DDC, he will not be permitted to raise his constitutional claims. However, a letter of caution is the lightest sanction which the DDC may impose, and carries with it virtually no adverse consequences. See N.Y. Comp. Code Rules & Reg. tit. 22 § 603.9(b). That circumstance, along with the merely speculative possibility that such a sanction will be imposed, is not enough to preclude Younger abstention.

bad faith are present here.

Plaintiff first argues that because the DDC sought the Attorney General's assistance inn pursuing its investigation, and because the Attorney General publicly disseminated his complaint, the DDC has acted impartially and in bad faith. Even assuming, however, that these allegations evidence some impropriety, they are not sufficient to show the bad faith required by Younger. Younger's bad faith exception requires that the proceedings have no basis in fact or be brought solely for purposes of harassment. See Kugler v. Helfant, 421 U.S. 117, 126 n.6 (1975).

Plaintiff also argues that the controversy between Justice Murphy and Mr. Gentile somehow involved the DDC's investigation of his conduct, and that this controversy, coupled with the Appellate

Division's subsequent investigation of the controversy, has rendered the DDC and the Appellate Division irretrievable biased against him. This bare allegation falls short of the showing of bias necessary to make Younger abstention inappropriate.[3] See Collins v. County of Kendall, 807 F.2d 95, 99 (7th Cir. 1986). Moreover, any such bias can be the basis of a motion to recuse any member of the DDC or the Appellate Division, and New York law requires recusal for actual or apparent bias. See N.Y. Jud. Law § 14 (McKinney 1983); Code of Judicial Conduct, Canons 2 & 3, reprinted in, N.Y. Jud. Law App. (McKinney 1975). In

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[3]Plaintiff's reliance upon Gibson v. Berryhill, 411 U.S. 564 (1973) is misplaced. In Berryhill, the Court's finding that a biased tribunal prevented plaintiff from raising constitutional claims was based upon a clear showing that the tribunal had a pecuniary interest in the outcome of the proceedings. See id. at 578-79. No such showing has been made here.

addition, plaintiff may also move to transfer the venue of the proceedings to another Department of the Appellate Division.

Finally, plaintiff argues that the DDC's refusal to grant an extension of time to respond to the charges, and its refusal to accept Ms. Moore as his representative, evidence impartiality and bad faith. These arguments are unpersuasive. A mere disagreement between plaintiff and the DDC with respect to the exercise of the DDC's discretion, without more, is totally insufficient predicate for a claim of bias sufficient to make Younger abstention inappropriate.

CONCLUSION

In sum, plaintiff has failed to show that he cannot fairly raise his constitutional claims in the State proceedings, and has failed to show the bad faith or extraordinary circumstances necessary to make younger abstention inappropriate.[4] Thus, this Court is constrained to defer to the state disciplinary proceedings and dismiss plaintiff's complaint. Defendant's motion to dismiss is granted an plaintiff's motion for a preliminary injunction is denied. The clerk is directed to dismiss the complaint and close the above-captioned

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[4]Merely alleging a fairly unusual set of factual circumstances is not the showing required by Younger. Instead Younger requires a showing of circumstances that are extraordinary "in the sense of creating an extraordinarily pressing need for immediate federal equitable relief." Kugler, supra, 421 U.S. at 125.

action.

It is SO ORDERED.

Dated: New York, New York

August 21, 1989

John E. Sprizzo
United States
District Judge

APPEARANCES

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JOSEPH J. GIAMBOI, ESQ.
Of Counsel

Section 1983 of Title 42 of the United States Code provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. (R.S. § 1979; Dec. 29, 1979, P.L. 96-170, § 1, 93 Stat. 1284.)

Judiciary Law § 90(10) provides:

> Any statute or rule to the contrary notwithstanding, all papers, records and documents upon the application or examination of any person for admission as an attorney and counsellor at law and upon any complaint, inquiry, investigation or proceeding relating to the conduct or discipline of an attorney or attorneys, shall be sealed and be deemed private and confidential. However, upon good cause being shown, the justices of the appellate division having jurisdiction are empowered, in their discretion, by written order, to permit to be divulged all or any part of such papers, records and documents. In the discretion of the presiding or acting presiding justice of said appellate division, such order may be made either without notice to the persons or attorneys to be affected thereby or upon such notice to them as he may direct. In furtherance of the purpose of this subdivision, said justices are also empowered, in their discretion, from time to time to make such rules as they may deem necessary. Without regard to the foregoing, in the event that charges are sustained by the justices of the appellate division having jurisdiction in any complaint, investigation or

proceeding relating to the conduct or discipline of any attorney, the records and documents in relation thereto shall be deemed public records.

22 N.Y.C.R.R. § 603.4 provides:

(a) (1) This Court shall appoint a Departmental Disciplinary Committee for the Judicial Department, which shall be charged with the duty and empowered to investigate and prosecute matters involving alleged misconduct by attorneys to whom this Part shall apply, and to impose discipline to the extent permitted by section 603.9 of this Part. This court shall, in consultation with the Departmental Disciplinary Committee, appoint a chief counsel to such committee and such assistant counsel, special counsel and supporting staff as it deems necessary.

(2) The membership of the Departmental Disciplinary Committee shall be a total of not more than 36 persons each of whom shall be appointed by this court for a term of three years, except members who have been appointed to complete unexpired terms, in which case such members may be reappointed for three-year or shorter terms. Two-thirds of the members of the Departmental

Disciplinary Committee shall be members of the Bar of the State of New York in good standing, each of whom shall reside or have an office in the City of New York, and one-third of such members shall be persons who are not members of the Bar, each of whom shall reside or have a principal place of business in the City of New York.

(3)(c) Investigation of professional misconduct may be commenced upon receipt of a specific complaint by this court, or by the Departmental Disciplinary Committee or such investigation may be commenced sua sponte by this court or by the Departmental Disciplinary Committee. Complaints must be in writing and subscribed by the complainant but need not be verified.

(d) When the Departmental Disciplinary Committee, after investigation, determines that it is appropriate to file a petition against an attorney in this court, the committee shall institute disciplinary proceedings in this court and the court may discipline an attorney on the basis of the record of hearings before such committee, or may appoint a referee, justice or judge to hold hearings.

(e)(1) An attorney who is the subject of an investigation, or of charges by the Departmental Disciplinary Committee of professional misconduct... may be suspended from the practice of law, pending consideration of the charges against the attorney, upon a finding that the attorney is guilty of professional misconduct immediately threatening the public interest. Such a finding shall be based upon:

> (i) the attorney's default in responding to the petition or notice, or the attorney's failure to submit a written answer to pending charges of professional misconduct or to comply with any lawful demand of this court or the Departmental Disciplinary Committee made in connection with any investigation, hearing, or disciplinary proceeding, or
>
> (ii) a substantial admission under oath that the attorney has committed an act or acts of professional misconduct, or
>
> (iii) other uncontroverted evidence of professional misconduct.

(2) The suspension shall be

made upon the application of the Departmental Disciplinary Committee to this court, after notice of such application has been given to the attorney pursuant to subdivision six of section 90 of the Judiciary Law. The court shall briefly state its reasons for its order of suspension which shall be effective immediately and until such time as the disciplinary matters before the Committee have been concluded, and until further order of the court.

(f) Disciplinary proceedings shall be granted a preference by this court.

22 N.Y.C.R.R. § 603.5 provides:

(a) Upon application by the Departmental Disciplinary Committee, or upon application by counsel to such committee, disclosing that such committee is conducting an investigation of professional misconduct on the part of an attorney, or has commenced proceedings against an attorney, or upon application by an attorney under such investigation, or who is a party to such proceedings, the clerk of this court shall issue subpoenas in the name of the presiding justice for the attendance of any person and the production of books and papers before such

committee or such counsel or any subcommittee or hearing panel thereof designated in such application at a time and place therein specified.

22 N.Y.C.R.R. § 603.9 provides:

(a) The Departmental Disciplinary Committee may issue an admonition or reprimand in those cases in which professional misconduct, not warranting proceedings before this court, is found. An admonition is discipline imposed without a hearing. A reprimand is discipline imposed after a hearing.

(b) The Departmental Disciplinary Committee may issue a letter of caution to an attorney when it is believed that the attorney acted in a manner which, while not constituting clear professional misconduct, involved behavior requiring comment. A letter of caution is not discipline and may not be considered in determining whether to impose discipline or the extent of discipline to be imposed in the event other charges of misconduct are brought against the attorney subsequently.

SUPREME COURT, APPELLATE DIVISION
First Judicial Department

Departmental Disciplinary Committee

41 Madison Avenue
New York, N.Y. 10010
(212) 685-1000

June 28, 1988

PERSONAL & CONFIDENTIAL

Honorable Robert Abrams
Attorney General
Department of Law
Two World Trade Center
New York, New York 10047

Re: Sua Sponte Investigation
Docket No. 1233/88

Dear Attorney General Abrams:

The Disciplinary Committee has commenced an investigation into the conduct of C. Vernon Mason, Esq. in connection with the Tawana Brawley matter. I understand that your office may have information, statements and documents which would be relevant and important to our inquiry. I would greatly appreciate it if we could receive any evidentiary materials presently available and if your office would, at the conclusion of the grand jury investigation,

assist us in obtaining the release of all other relevant materials.

This office will not take any steps at this time with regard to Mr. Mason and we will await the outcome of the grand jury's inquiry before proceeding further. However, your immediate assistance and cooperation in this matter would be most helpful in our preparation for possible future action.

Best regards.

Very truly yours,

Michael A. Gentile

MAG:mh

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

C. VERNON MASON,

Plaintiff,

: Civ.

- against -

DEPARTMENTAL DISCIPLINARY COMMITTEE, APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST JUDICIAL DEPARTMENT; Office of Chief Counsel,

Defendants.

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

JURISDICTION

1. This is an action for declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202, to protect the rights of Plaintiff secured by the First and Fourteenth Amendments to the Constitution of the United States, and 42 U.S.C. § 1983. This Court has jurisdiction of this cause under and by virtue of 28 U.S.C. §§ 1331,

1343 (3) and (4), because the claims set forth herein arise under and/or are secured by the Constitution of the United States or an Act of Congress.

VENUE

2. The causes of action and claims raised herein arise within the Southern District for the District of New York and the Departmental Disciplinary Committee, Appellate Division of the Supreme Court of the State of New York, First Judicial Department and its Office of Chief Counsel are party defendants. Accordingly, venue properly resides in this court under and by virtue of 28 U.S.C. § 1391(b).

NATURE OF PROCEEDINGS

3. This is a proceeding for a judgment declaring the rights of Plaintiff, C. Vernon Mason, Esq., an attorney duly licensed to practice law before the courts

of State of New York, pursuant to the First, and Fourteenth Amendments to the Constitution of the United States, and 42 U.S.C. §1983. Specifically, this action seeks a judgment declaring the pending investigation of plaintiff by defendants in contravention of plaintiff's rights to free speech and due process as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States, respectively.

4. This is a proceeding for injunctive relief, preliminarily and permanently enjoining the defendants, Departmental Disciplinary Committee, Appellate Division of the Supreme Court of the State of New York, First Judicial Department and its Office of Chief Counsel, from proceeding upon complaint number 1233/88 against plaintiff, C. Vernon Mason,

Esq., as said complaint was brought and/or has been pursued in bad faith, for purposes of harassment, and in derogation of plaintiff's rights to due process.

PARTIES

5. Plaintiff, C. Vernon Mason, Esq., is a prominent Black civil rights and criminal defense attorney who has been outspoken cn the issues of racism and racial violence in New York City. He received his doctor of jurisprudence from Columbia Law School in 1972 and was admitted to the practice of law in the courts of the State of New York in 1973. Plaintiff Mason resides and maintains an office in New York County.

6. Defendant Disciplinary Committee, Appellate Division of the Supreme Court of the State of New York, First Judicial Department [hereinafter "DDC,"

"Disciplinary Committee," or "the Committee"] is an arm of the Appellate Division of the Supreme Court for the First Judicial Department [hereinafter "The Appellate Division"]. The Appellate Division has exclusive jurisdiction, pursuant to New York Judiciary Law 390, over attorney discipline within its department. Defendant Disciplinary Committee is charged, pursuant to § 603.4 of the Rules of Court for the Supreme Court, Appellate Division, with the duty and empowered to investigate and prosecute matters involving alleged misconduct by attorneys to whom the rules apply, and to impose discipline to the extent authorized by § 603.9 of the Rules. Pursuant to § 6.1 of the Rules and Procedures of the Departmental Disciplinary Committee, Appellate Division of the Supreme Court of

the State of New York, First Judicial Department, all matters relating to complaints submitted to the Committee, and any action taken by specified subdivisions thereof, shall be confidential, except upon and to the extent required by the terms of a written waiver of confidentiality by the accused attorney.

7. Defendant Office of Chief Counsel to the Disciplinary Committee was formerly held by Michael A. Gentile. Based on an exclusive news account dated January 4, 1989, Mr. Gentile resigned his post as Chief Counsel to the Disciplinary Committee effective February 1, 1989. Said office is currently held by newly appointed Chief Counsel Hal Lieberman. Defendant Office of Chief Counsel, is maintained at 41 Madison Avenue, New York, New York.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

8. On Saturday, November 28, 1987, Tawana Brawley was discovered outside the Pavilion Apartments in Wappingers Falls lying inside a garbage bag in a fetal position. The fifteen year child, who had been reportedly missing since November 23, was apparently in a semi-conscious state. Her body was smeared with excrement and her hair was short and matted. The words "KKK" and "NIGGER" were written on Ms. Brawley's chest, torso and clothing. Ms. Brawley, who is Black, alleged that she had been abducted and sexually assaulted by several white men, one of whom displayed a policeman's badge.

9. Sometime thereafter, Plaintiff, C. Vernon Mason, Esq., and Alton H. Maddox, Esq., an attorney practicing in the Second Judicial Department of the State of New York, entered the case as legal advisers to

Tawana Brawley.

10. On or about January 26, 1988, pursuant to repeated requests by Plaintiff, et. al, for a special prosecutor, the Hon. Mario Cuomo, Governor of the State of New York, appointed Attorney General Robert Abrams as special prosecutor to investigate the disappearance of Tawana Brawley. Prior to the appointment of Attorney General Abrams, two previously selected prosecutors -- William Grady and David Sall -- resigned citing unspecified conflicts-of-interests.

11. On or about February 29, 1988, Attorney General Abrams, before the assembled press, selected a grand jury to investigate the charges.

12. Thereafter, on October 6, 1988, at a mammoth press conference, Attorney General Abrams released the 170-page report of the grand jury investigating Ms.

Brawley's disappearance. At the same press conference, the Attorney General announced that he was filing a grievance against Ms. Brawley's attorneys, Plaintiff herein and Alton H. Maddox, Jr., Esq. At that time, Attorney General Abrams publicly disseminated over two-hundred copies of his ten-page complaint containing specific charges of professional misconduct against Messrs. Mason and Maddox. A copy of that complaint may be found in the Appendix to Mr. Mason's Motion For Permission To Appeal To the Court of Appeals of the State of New York, attached hereto as Exhibit A, at 000045 - 000054.

13. On or about October 14, 1988, Plaintiff Mason was served with an official letter from the Disciplinary Committee indicating that, "[b]ased upon publicly reported accounts," the Committee had

"commenced a sua sponte investigation into [plaintiff's] actions in connection with the Tawana Brawley matter." See Exhibit A at 000055. Neither the particular "publicly reported accounts" nor the specific actions of Plaintiff to which the Committee referred were identified in the letter. Rather, Plaintiff was directed to respond within twenty days "only to those allegations [contained in the publicly disseminated complaint of the Attorney General] that deal[t] with [Plaintiff's] conduct or involvement" in the Brawley matter. Id. Enclosed with the letter was a copy of the ten-page complaint of the Attorney General, accompanied by thirty-eight exhibits (consisting primarily of over one-hundred pages of largely illegible newspaper articles), and a copy of the 170-page report of the Grand Jury of Dutchess

County. Plaintiff was directed to address all inquiries to Alan S. Phillips.

14. Subsequent to service of the letter from the DDC, Mr. Mason twice sought -- by letters dated October 31, 1988, and November 4, 1988, see Exhibit A at 000056 and 000058-064, respectively -- and was twice denied a reasonable extension of time in which to respond to the lengthy complaint of the Attorney General. Among the grounds cited for said extension was (1) the ambiguity in the nature and extent of the Committee's inquiry, (2) the need to obtain and review the minutes of the Grand Jury of Dutchess County, upon which part of the Attorney General's complaint was based, and (3) the propriety of the complaint of the Attorney General and the Committee's adoption and pursuit thereof. Both denials for an extension of time were upon the

authority of William E. Jackson, Chairperson of the DDC.

15. Thereafter, on November 4, 1988, a response to the allegations of professional misconduct made by the Attorney General against Mr. Mason was submitted on his behalf. Exhibit A at 000062-068. Mr. Mason subsequently made a request to withdraw that response and to file anew pending his efforts to secure permanent counsel and to obtain and review the minutes of the Grand Jury of Dutchess County. See Exhibit A at 000069.

16. On or about November 18, 1988, Mr. Mason was served with a letter from Michael A. Gentile, as Chief Counsel to the DDC, directing him, inter alia, to respond to thirteen questions with respect to his legal representation and to submit a notice of appearance of his authorized counsel(s)

endorsed with his signature. See Exhibit A at 000070-072.

17. By letter dated November 21, 1988, counsel herein, in compliance with the request of Michael A. Gentile as Chief Counsel to the DDC, submitted a Notice of Appearance signed by Mr. Mason as authorizing their representation. Exhibit A at 000075. Said counsel renewed Mr. Mason's request for an extension of time and informed the Committee of their intention to file, on or before December 5, 1988, a motion, pursuant to NYCPL § 190.25, for disclosure of the minutes of the grand jury that was charged with the duty of investigating Ms. Brawley's disappearance. See Exhibit A at 000073-074. Said motion was duly filed on that date with the Supreme Court of Dutchess County, Judge Angelo Ingrassia presiding. See Exhibit A

at 000087. By order dated February 21, 1989, said motion was denied.

18. By letter dated December 8, 1988, counsel herein were advised by Michael A. Gentile, as Chief Counsel to the DDC, inter alia, that Mr. Mason's request for an extension of time was denied, that he must file any supplementary response to the November 4, 1988 submission by January 9, 1989, and that the DDC would not recognize Stephanie Y. Moore, Esq., as one of Mr. Mason's counsel as she is not admitted to the bar in New York. See Exhibit A at 000093-094.

19. On or about December 20, 1988, Mr. Mason, through counsel, petitioned the Appellate Division of the Supreme Court of the State of New York, First Judicial Department [hereinafter "Appellate Division"], pursuant to Article 78 of the

CPLR, for a writ of mandamus directing the DDC to reverse their decisions (1) denying Plaintiff's request for an extension of time in which to respond to allegations of professional misconduct made by Attorney General Robert Abrams, and (2) refusing to allow Stephanie Y. Moore, Esq., an attorney admitted to practice in the State of Pennsylvania, the United States District Court for the Eastern District of Pennsylvania, and the United States Courts of Appeals for the Third and Fourth Circuits, to proceed on Plaintiff's behalf. Plaintiff argued, inter alia, that the defendants's actions were arbitrary and in derogation of his constitutional right to due process. See Exhibit A 000001 et seq.

20. Thereafter, on or about December 21, 1988, Mr. Mason submitted to defendant Disciplinary Committee a formal complaint

of misconduct against Attorney General Abrams in connection with the investigation of the charges of racial and sexual assault on the minor child, Tawana Brawley. Said complaint charged, inter alia, that the Attorney General's public dissemination of the text of the complaint in flagrant disregard of the rules of defendant Disciplinary Committee constituted a violation of the disciplinary rules in that it was intentionally calculated to interfere with orderly and impartial functioning of the Committee. Receipt of the aforementioned confidential complaint against the Attorney General was acknowledged by letter to Plaintiff dated December 29, 1988, over the signature of then-Chief Counsel Michael A. Gentile. See Exhibit A at 000218.

21. On or about January 3, 1989, in

response to Mr. Mason's December 20, 1988 mandamus petition, the Committee cross-moved, upon the Affirmation and Verified Answer of Michael A. Gentile, for dismissal of that application for Article 78 relief. See Exhibit A at 000102. Paragraph 4 of the Mr. Gentile's Affirmation alleged that the Disciplinary Committee had commenced a "sua sponte" investigation into Mr. Mason's conduct in connection with his representation of Tawana Brawley on June 20, 1988. See Exhibit A at 000106. Attached as Exhibit A to Mr. Gentile's Affirmation was a document, written during the pendency of the grand jury investigation into Tawana Brawley's disappearance, from Mr. Gentile to the Attorney General. See Exhibit A at 000117. Specifically, said document was a "PERSONAL & CONFIDENTIAL" letter dated June

28, 1988, from Michael A. Gentile, as Chief Counsel to the DDC, to Attorney General Robert Abrams, then serving as special prosecutor to the Dutchess County Grand Jury. Said letter advises the Attorney General that the DDC had commenced an investigation into the conduct of Mr. Mason in connection with his representation of Tawana Brawley. Said letter further expresses interest in certain "information, statements and documents which would be relevant to [the DDC's] inquiry," and specifically solicits receipt of "any evidentiary materials presently available" to the Attorney General and his office. The letter advises that the DDC "will not take any steps at this time" but will "await the outcome of the grand jury's inquiry before proceeding further." Finally, the letter requests the Attorney

General's "immediate assistance and cooperation" to facilitate the DDC's "preparation for possible future action." The letter concludes with "Best regards," from Mr. Gentile, as Chief Counsel to the DDC, to the Attorney General.

22. On January 4, 1989, one day following the submission of the Committee's cross-motion, an exclusive news account in the Daily News reported that Mr. Gentile had resigned his post as Chief Counsel to the Disciplinary Committee effective February 1, 1989. See Exhibit A at 000202. At that time, Mr. Gentile's resignation was attributed solely to allegations that he had mishandled a disciplinary probe into the conduct of Joel Steinberg, a lawyer who had been recently convicted in connection with the death of the child he was raising.

23. On or about January 9, 1989, counsel for Mr. Mason submitted a Reply Affirmation in response to the Committee's January 3, 1989 notice of cross-motion. See Exhibit A at 000161. In addition, on or about January 6, 1989, based upon the aforementioned letter attached as Exhibit A to the January 3, 1989 Affirmation of Michael A. Gentile, Mr. Mason filed a second application seeking Article 78 relief. See Exhibit A at 00172. Said application sought an order directing the Committee (1) to dismiss the sua sponte complaint, docket no. 1233/88, against Mr. Mason, and (2) to disclose to Mr. Mason, through the process of discovery, any and all information concerning the nature and details of all communications with respect to complaint number 1233/88 between Michael A. Gentile, as Chief Counsel to the DDC,

and Attorney General Robert Abrams during the time period beginning June 28, 1988 and up to October 14, 1988. Mr. Mason's application also initially requested an order directing the Disciplinary Committee to stay any and all proceedings before it in connection with the grand jury investigation of the disappearance of Tawana Brawley, including but not limited to, (1) complaint number 1233/88 against Mr. Mason, (2) and his complaint dated December 21, 1988 against Attorney General Robert Abrams. Based upon discussions between counsel to both parties, however, the request for a stay was voluntarily stricken from the pleadings to expedite decision on the application.

24. By further consent of the parties, the two Article 78 applications of Mr. Mason were consolidated and made

returnable on January 30, 1989. Exhibit A at 000279.

25. On or about January 23, 1989, the DDC cross-moved, upon the Verified Answer and Affirmation of Richard M. Maltz, for dismissal of Mr. Mason's second Article 78 application. See Exhibit A at 000245.

26. On or about January 30, 1989, counsel to Mr. Mason filed a Reply Affirmation in response to the Committee's second notice of cross-motion. Thereafter, on January 31, 1989, two news accounts, appearing in the Daily News and the New York Law Journal ("Law Journal"), see Exhibit A at 000322 and 000323-329.reported for the first time that there were allegations of unethical conduct surrounding the DDC's investigation into Mr. Mason's representation of Ms. Brawley. Those allegations involved charges and

counter-charges of former Chief Counsel, Michael A. Gentile and Justice Frances T. Murphy, the Presiding judge of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department.

27. Specifically, following Mr. Gentile's sudden resignation in early January as Chief Counsel of the DDC, several prominent members of the New York legal community, including Special Prosecutor Charles J. Hynes and Administrator of the State Commission on Judicial Conduct, Gerald Stern, called for an explanation of what was then widely considered the forced resignations of Gentile and his deputy counsel, Diane McShea. See "Notice of Motion For Leave To Appeal," attached hereto as Exhibit B, at 000031.

On January 30, 1989, Judge Murphy, the presiding judge of the Appellate Division, -- which rules on sanctions imposed by the DDC -- answered that call in a report released that day commenting on the resignations of both Gentile and his deputy counsel.

29. The text of Justice Murphy's report, was published January 31, 1989, in its entirety in the Law Journal. See Exhibit A at 000325-329. Therein Justice Murphy expressed "concern" with respect to the handling of the disciplinary complaint filed against Mr. Mason by Attorney General Robert Abrams. Specifically, Justice Murphy stated that "reports of the absences and non-productivity of Mr. Gentile caused me concern upon the filing with the DDC in October 1988 of the complaints of the Attorney General of the State of New York

against C. Vernon Mason in the Brawley case, a filing that was made public by the Attorney General in an extensive release to the press." Id. at 000327. Justice Murphy charged that Gentile "was so frightened by the prospect of the Mason matter that he was inclined to find a way of avoiding it." Id.

30. In an interview with the Law Journal, Mr. Gentile counter-charged that "Judge Murphy's interference was aimed at thwarting our efforts to assure that Mason received the same due process afforded any lawyer facing charges of serious misconduct," and further rebuked the Justice for "open[ing] up to the public view a pending matter." See Exhibit A at 000324.

31. That controversy prompted the filing, on February 1, 1989, of an addendum

on behalf of Mr. Mason to counsels' Reply Affirmation of January 30, 1989. Exhibit A at 000317. Therein Mr. Mason argued that the ongoing controversy within and between the Appellate Division and its Disciplinary Committee had totally undermined his rights to due process and unalterably compromised his right to a fair and impartial tribunal. Immediately thereafter, the Committee filed an Affirmation in response to counsels' addendum asserting both procedural and substantive arguments in opposition to counsels' addendum. Id. at 000333.

32. On that same date, February 1, 1989, a New York Newsday ("Newsday") article entitled "Lawyers Say Firing Was 'Power Play'", see Exhibit A at 000331, reported that Mr. Gentile and his former deputy counsel had filed a complaint with the State Commission on Judicial Conduct

against Justice Murphy and his Chief Clerk, Harold Reynolds. Among the allegations reportedly made to the Judicial Commission was that "Justice Murphy and Reynolds . . . interfered improperly in the disciplinary process, directing staff and committee actions, in an effort to help their friends and punish their enemies." See id.

33. Shortly thereafter, the proposed official intervention of the Court of Appeals of the State of New York [hereinafter "Court of Appeals"] into the dispute was reported in The New York Times ("Times"). The Times article of February 4, 1989, "Wachtler to Act on Lawyers' Panel Fight," see Exhibit B at 000037, repeated the charges and counter-charges of Mr. Gentile and Justice Murphy and again cited the investigation of Mr. Mason's role in representing Tawana Brawley as one of the

critical elements of the dispute.

34. On February 16, 1989, the Chief Judge of the Court of Appeals, Sol Wachtler, in a public release in the Law Journal instructed the Appellate Division "as a Court" to "make inquiry with respect to the entire situation and promptly do whatever is necessary to maintain the dignity, respect and integrity" of that court and, "especially," its Departmental Disciplinary Committee. 35. The February 16th Law Journal article that accompanied the publication of Judge Wachtler's letter observed that the "exchange of charges between Justice Murphy and Mr. Gentile have [sic] raised questions about the handling of ongoing disciplinary investigations, including a complaint filed by State Attorney General Robert Abrams against C. Vernon Mason, one of the lawyers who

represented Tawana Brawley."

36. On or about February 17, 1989, in compliance with the directive of the Court of Appeals, Presiding Justice Murphy appointed four Appellate Division justices to investigate the controversy surrounding Mr. Gentile's resignation. Thereafter, on February 19, 1989, a Newsday article, "Judicial Factions In Split Over Probe," see Exhibit B at 000040, reported that the thirteen judges of the Appellate Division "are split into two factions on whether the judicial investigation looks like a 'whitewash.'" Similarly, unnamed members of the DDC reportedly questioned whether the investigation by the judges could be "vigorous, impartial or ethical." In addition, some question was raised as to the timing of the selection of the four judges by Justice Murphy, and whether any

of them had earlier drafted and considered sending a letter in support of Justice Murphy to the Court of Appeals. Criticism was also leveled against William E. Jackson, Chairperson of the DDC, for sending a letter on DDC stationery in support of Justice Murphy to the four-judge investigatory panel. That letter was published in its entirety by the Law Journal reportedly upon the request of Mr. Jackson. See Exhibit B at 000041.

39. Shortly thereafter, on February 22, 1989, the Appellate Division entered and filed two orders disposing of Mr. Mason's consolidated applications for Article 78 relief. See Exhibit B at 000027; 000028, were issued without opinion.

40. Specifically, the Appellate Division (1) granted Mr. Mason's petition

for reversal of the DDC's determination denying him an extension of time, directing instead that Mr. Mason respond to the complaint within 60 days of the date of the order; and (2) denied Mr. Mason's petition for reversal of the DDC's determination refusing to allow Stephanie Y. Moore, Esq., to proceed as counsel on his behalf, without prejudice to the submission of an application for pro hac vice admission. See Exhibit B at 000027. Said application was duly made on or about February 29, 1989, and subsequently granted by order dated April 12, 1989, attached hereto as Exhibit C.

41. By separate order, the Appellate Division further (1) denied Mr. Mason's requests for dismissal of the complaint; and (2) refused to grant him discovery of certain communications between Michael A.

Gentile, as Chief Counsel to the DDC, and the Attorney General of the State of New York, Robert Abrams. See Exhibit B at 000028. Notice of Entry of both orders was served upon counsel to Mr. Mason on or about February 27, 1989.

42. On February 21, 1989, just prior to the decisions by the Appellate Division denying Article 78 relief, Mr. Mason's Motion for Disclosure of the Grand Jury minutes was denied by Judge Ingrassia. On or about February 27, 1989, based upon the controversy within and among the Appellate Division and its Disciplinary Committee. Mr. Mason filed a Motion to Renew the previous,motion for disclosure. Said motion to renew was argued before Judge Ingrassia on March 29, 1989, and subsequently denied by order dated May 18, 1989.

43. Meanwhile, on or about March 3, 1989, Chief Clerk to Justice Murphy, Harold J. Reynolds, resigned amid allegations that he personally interfered with two high profile disciplinary investigations. See Exhibit B at 000043-044.

44. Public accounts on the internal investigation ordered by Judge Wachtler indicate that the justices of the Appellate Division apparently heard unsworn testimony from several witnesses. On March 17, 1989, the Law Journal reported that notwithstanding the appointment of the four-judge panel by Justice Murphy, all of the associate justices were participating in the questioning of witnesses. See Exhibit B at 000042. Among those interviewed by the justices were Harold Reynolds, former Chief Clerk of the Appellate Division, Mr. Gentile and Ms.

McShea.

45. On or about April 6, 1989, Justice Murphy reportedly answered questions from his fellow Appellate Division justices in a session described by a source as 'not too rigorous.' See Exhibit D.

46. On or about March 23, 1989, Mr. Mason filed with the Court of Appeals a Motion for Leave to Appeal the unanimous orders, without opinion, of the Appellate Division, denying his requested Article 78 relief. See Exhibit B. Therein Mr. Mason noted, inter alia, the pendency of the internal investigation of the Appellate Division and his due process right to review the final report of the Appellate Division to determine whether the procedures employed by that court were impartially implemented, and whether his

rights were adequately protected thereby. See Exhibit B at 000018.

47. Subsequently, on or about April 28, 1989, the report of the Appellate Division on its internal investigation was released to the public and published in its entirety in the Law Journal.. That report, attached hereto as Exhibit E, endorsed by all but one of the Appellate Division's associate justices, focused primarily on procedural questions and the resignations of Mr. Gentile and his deputy counsel. With respect to the allegations of misconduct, the report summarily concludes "that neither the Presiding Justice nor any other member of this Court directed or otherwise participated in the investigation, prosecution or disposition of any disciplinary matter." The dissent, without explanation, found both the forced

resignation "wrong and its manner of execution terribly wrong."

48. Chief Judge Sol Wachtler, on behalf of the Court of Appeals, issued a letter to the Appellate Division justices, also published by the Law Journal, expressing that Court's satisfaction "that the objectives sought by the process have been met," yet "returning the underlying transcripts and exhibits" without reviewing them. Based upon public accounts, the Court of Appeals declined to examine the underlying evidence because of a potential conflict should Court be called upon to review the related case against Justice Murphy pending before the New York State Commission on Judicial Conduct. See Exhibit F.

49. Thereafter, by order dated May 4, 1988, Mr. Mason's motion for leave to

appeal to the Court of Appeals was denied. See Exhibit G.

50. Throughout the pendency of the aforementioned litigation, the Disciplinary Committee has proceeded with its investigation into the allegations made by Attorney General Robert Abrams. By letter dated March 14, 1989, the Committee indicated its desire to speak with Tawana Brawley "[i]n order that a thorough investigation is conducted," and requested that Mr. Mason "communicate to Ms. Brawley [its] request for her cooperation." See Exhibit H.

51. By letter dated, March 15, 1989, the Committee served upon counsel to Mr. Mason a Judicial Subpoena Duces Tecum, attached hereto as Exhibit I, requesting, inter alia, Mr. Mason's "complete file relating to the representation of Glenda

Brawley and Tawana Brawley." Said subpoena was subsequently withdrawn.

52. By letter dated May 1, 1989, relevant portions thereof attached hereto as Exhibit J, Counsel accepted service of a second Judicial Subpoena Duce Tecum For Mr. Mason's oral testimony pursuant to said subpoena presently scheduled for May 26, 1989.

53. The publication of the disciplinary complaint against Mr. Mason by the Attorney General was malicious, unethical and designed to prejudice the anticipated proceedings against him.

54. The publication of the disciplinary complaint against Mr. Mason by the Attorney General was malicious, unethical, politically motivated and designed to harass and to chill the First Amendment rights of Mr. Mason and other

activist attorneys to criticize government officials by singling out Mr. Mason and fellow attorney, Alton H. Maddox, Jr., for harsh and discriminatory treatment. The adoption and pursuit of said complaint by defendant Disciplinary Committee is in furtherance of said impermissible objective. Said publication is in violation of Mr. Mason's rights to due process in that it was designed to and has had the effect of depriving him of an impartial tribunal.

55. The interjection of disciplinary considerations into the underlying grand jury investigation into the disappearance of Tawana Brawley by the Office of Chief Counsel was in bad faith and/or prejudiced Mr. Mason's right to due process, in that said interjection was designed to and/or had the effect of shifting the focus of the

investigation towards amassing evidence against Mr. Mason.

56. The interjection of disciplinary considerations into the underlying grand jury investigation into the disappearance of Tawana Brawley by the Office of Chief Counsel was designed to and/or had the effect of discrediting the charges of Ms. Brawley in order both to silence the advocacy on her behalf and to bolster the anticipated charges of misconduct against her attorneys.

57. The adoption and pursuit of the publicly disseminated complaint of the Attorney General by the Disciplinary Committee was in bad faith and in derogation of Mr. Mason's right to due process in that that Committee knew or should have known of the ethical improprieties in the public dissemination

of said complaint.

58. The continuing public controversy within and between the Appellate Division and the Disciplinary Committee has further and completely deprived Mr. Mason of his rights to due process and an impartial tribunal.

59. The internal investigation of the Appellate Division was pursued in bad faith and/or without regard to the due process rights of Mr. Mason. The published report thereof, reportedly based primarily upon unsworn testimony, is unreliable due to an inherent conflict of interest.

60. As a result of the foregoing, the conduct of the investigation of Mr. Mason has been arbitrary, capricious and in derogation of his rights to due process, an impartial tribunal, and free speech.

CAUSES OF ACTION

Count One

61. Plaintiff restates and realleges paragraphs 1 through 60 as if each were fully set forth here.

62. The malicious and unethical publication of the disciplinary complaint against Mr. Mason by the Attorney General and the ensuing controversy within and between the Appellate Division and Defendant Disciplinary Committee has completely deprived Mr. Mason of his rights to due process and an impartial tribunal as guaranteed by the Fourteenth Amendment to the Constitution of the United States and 42 U.S.C. § 1983.

Count Two

63. Plaintiff restates and realleges paragraphs 1 through 60 as if each were fully set forth here.

64. Defendants' solicitation,

adoption, and/or pursuit of the maliciously and unethically published complaint of the Attorney General is in bad faith and/or in derogation of Plaintiff's right to due process guaranteed by the Fourteenth Amendment to the Constitution of the United States and 42 U.S.C. 1983.

Count Three

65. Plaintiff restates and realleges paragraphs 1 through 60 as if each were fully set forth here.

66. Defendants' solicitation, adoption, and/or pursuit of the maliciously and unethically published complaint of the Attorney General is designed to harass Plaintiff in derogation of Plaintiff's right to freedom of speech as guaranteed by the First Amendment to the Constitution of the United States and 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that this Court

1) enter an order preliminarily and permanently enjoining defendants from proceeding upon complaint number 1233/88 against plaintiff, C. Vernon Mason, Esq., and

2) for such other and further relief as this Court may deem just and proper.

Dated: New York, New York
May , 1989

Respectfully submitted,

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